

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Petitioner is a state prisoner currently incarcerated at California State Prison, Solano. He has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 arguing that the California Department of Corrections and Rehabilitation (“CDCR”) is violating his plea agreement by miscalculating his time credits. He is in custody based upon a conviction obtained in Santa Cruz County Superior Court in 1999. Santa Cruz is located within the venue of this court, but Solano, where Petitioner is incarcerated, is located within the venue of the United States District Court for the Eastern District of California. *See* 28 U.S.C. § 84.

A petition for a writ of habeas corpus made by a person in custody under the judgment and sentence of a state court of a state which contains two or more federal judicial districts may be filed in either the district of confinement or the district of conviction. *See 28 U.S.C. § 2241(d).* Each of such districts shall have concurrent jurisdiction to entertain the petition; however, the district court for the district where the petition is filed may transfer the petition to the other district in the furtherance of justice. *See id.* However, if the petition is directed to the manner in which a sentence is being

executed, e.g., if it involves parole or time credits claims, the district of confinement is the preferable forum. *See Habeas L.R. 2254-3(a); Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989).

This case was transferred from the Eastern District of California to this Court on the grounds that the petition “attacks a conviction issued by the Santa Cruz Superior Court.” It does not. The petition sets forth one claim -- that the CDCR is violating his plea bargain by miscalculating his time credits. (Mem. in Supp. of Pet. at 8-12). Specifically, Petitioner argues that the CDCR has “improperly applied” California law to his sentence by calculating his prison term and time credits based upon California Penal Code § 667.5, rather than the more favorable time credit scheme in California Penal Code § 1192.7. (*Id.* at 10). He claims that the “application of an un-sentenced Penal Code Section is an abuse of discretion by the executive branch exceeding their jurisdiction.” (*Id.* at 11). He seeks to have the Court “specify to CDCR what Petitioner’s sentence is under the law” and “how to apply” the law to the calculation of his sentence. (*Id.*) As the petition challenges the calculation of Petitioner’s sentence and time credits, it is directed to the execution of Petitioner’s sentence, not the validity of his conviction. Consequently, the preferable venue for this case is the United States District Court for the Eastern District of California, where Petitioner is confined. *See Habeas L.R. 2254-3(a); Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989).

Accordingly, IT IS ORDERED in the interest of justice, and pursuant to 28 U.S.C. § 1406(a), that this action be TRANSFERRED to the United States District Court for the Eastern District of California.

The Clerk of the Court shall transfer this matter forthwith.

IT IS SO ORDERED.

DATED: February 15, 2011

Jeffrey S. White

JEFFREY S. WHITE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DONALD RADONICH,

Case Number: CV11-00220 JSW

Plaintiff,

CERTIFICATE OF SERVICE

V.

CA DEPT OF CORRECTIONS et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 15, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Donald Radonich P-23442
CALIFORNIA STATE PRISON, SOLANO (4000)
P.O. BOX 4000
VACAVILLE, CA 95696-4000

Dated: February 15, 2011

Jennifer Ottolini
Richard W. Wiekling, Clerk
By: Jennifer Ottolini, Deputy Clerk

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